

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018-AT49

Review of Information Concerning Bighead Carp (*Hypophthalmichthys nobilis*)

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of inquiry.

SUMMARY: The U.S. Fish and Wildlife Service is reviewing available economic and biological information on bighead carp (*Hypophthalmichthys nobilis*) for possible addition of that species to the list of injurious wildlife under the Lacey Act. The importation and introduction of bighead carp into the natural ecosystems of the United States may pose a threat to agriculture, horticulture, forestry, the health and welfare of human beings, and the welfare and survival of wildlife and wildlife resources in the United States. Listing bighead carp as injurious would prohibit their importation into, or transportation between, the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States, with limited exceptions. This notice seeks comments from the public to aid in determining if a proposed rule is warranted.

DATES: Comments must be submitted on or before November 17, 2003.

ADDRESSES: Comments may be mailed or sent by fax to the Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 322, Arlington, VA 22203; fax (703) 358-1800. You may send comments by electronic mail (e-mail) to: BigheadCarp@fws.gov. See the Public Comments Solicited section below for file format and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Kari Duncan, Division of Environmental Quality, Branch of Invasive Species at (703) 358-2464 or kari_duncan@fws.gov.

SUPPLEMENTARY INFORMATION: On October 16, 2002, the U.S. Fish and Wildlife Service received a petition

requesting that bighead carp, black carp, and silver carp be considered for inclusion in the injurious wildlife regulations pursuant to the Lacey Act. The petitioners expressed concern that bighead carp could invade the Great Lakes from the Mississippi River basin, where they are established, through a manmade ship and sanitary canal. The petitioners, 25 members of Congress representing the Great Lakes region, are concerned that bighead carp, because they are voracious eaters, may impact food supplies available to native fisheries in the Great Lakes, which are already struggling against other invasive species. The petitioners also noted that the Great Lakes fisheries are valued at approximately \$4 billion, and resource managers have spent decades trying to restore and protect them.

Bighead carp are native to southern and central China. They feed on plankton and prefer large river habitats. They can grow to maximum lengths of about 58 inches and reach sexual maturity at about 21.6 inches. In Asia, bighead carp typically spawn between April and June, and they often migrate upstream to spawn.

Bighead carp were imported into the United States in 1972 by a fish farmer who wanted to use them in combination with other phytoplankton-eating fish to improve water quality and increase fish production in culture ponds (Fuller, et al, 1999). They have been used in many parts of the world as food fish. Bighead carp have been recorded from within or along the borders of at least 18 States.

The Lacey Act (18 U.S.C. 42) and its implementing regulations in 50 CFR part 16 restrict the importation into or the transportation between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States of any species of wildlife, or eggs thereof, determined to be injurious or potentially injurious to certain interests, including those of agriculture, horticulture, forestry, the health and welfare of human beings, and the welfare and survival of wildlife and wildlife resources in the United States. However, injurious wildlife may be imported by permit for zoological, educational, medical, or scientific purposes in accordance with permit regulations at 50 CFR 16.22, or by Federal agencies without a permit solely for their own use. If the process initiated by this notice results in the addition of bighead carp to the list of injurious wildlife contained in 50 CFR part 16, their importation into the United States would be prohibited except under the

conditions, and for the purposes, described above.

This notice solicits economic, biological, or other information concerning bighead carp. The information will be used to determine if the species is a threat, or potential threat, to those interests of the United States delineated above, and thus warrants addition to the list of injurious wildlife in 50 CFR 16.13.

Public Comments Solicited

Please send comments to Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 322, Arlington, VA 22030. Comments may be hand-delivered to the above address or faxed to (703) 358-1800. If you submit comments by e-mail, please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please include "Attn: [RIN 1018-AT49]" and your name and return address in your e-mail message. Please note that this email address will be closed at the termination of this public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority: This notice is issued under the authority of the Lacey Act (18 U.S.C. 42).

Dated: September 10, 2003.

Craig Manson,

Assistant Secretary for Fish, Wildlife and Parks.

[FR Doc. 03-23745 Filed 9-16-03; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 030908222–3222–01; I.D. 051603C]

RIN 0648–AQ65

Atlantic Highly Migratory Species (HMS); Recreational Atlantic Blue and White Marlin Landings Limit; Clarification of Recreational HMS Reporting Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments; public hearings.

SUMMARY: NMFS proposes this rule to amend the regulations governing Atlantic HMS recreational fisheries in order to implement recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT), and to achieve consistent recreational reporting requirements for Atlantic highly migratory species. This rule proposes to: establish an annual domestic landing limit of 250 Atlantic blue and white marlin, combined; establish procedures to carry forward overages and underages of the marlin landings limit to subsequent years; implement management measures to ensure that the annual domestic Atlantic marlin landing limit is not exceeded; and, clarify regulations by specifying that the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category is required to report recreational landings of Atlantic bluefin tuna, billfish, and swordfish. The purpose of these proposed actions is to comply with ICCAT recommendations, improve upon the management and conservation of Atlantic HMS, and establish consistent HMS recreational reporting requirements to facilitate enforcement.

DATES: Written comments on the proposed rule must be received by 5 p.m. E.S.T. on October 24, 2003. NMFS will hold public hearings from October 1, 2003, through October 15, 2003.

ADDRESSES: Comments on the proposed rule may be submitted by mail to the HMS Management Division, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via facsimile (fax) to 301–713–1917. Please mark the outside of the envelope

“Comments on Proposed Recreational Billfish Rule.” Comments will not be accepted via e-mail or via the internet.

Copies of the Draft Environmental Assessment/Regulatory Impact Review (EA/RIR) for this proposed rule may be obtained from the Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910. The EA/RIR is also available on the HMS Management Division website at www.nmfs.noaa.gov/sfa/hmspg.html.

FOR FURTHER INFORMATION CONTACT:

Russell Dunn or Richard A. Pearson at 727–570–5447.

SUPPLEMENTARY INFORMATION: Atlantic billfish (including blue marlin, white marlin, sailfish, and spearfish) are managed under Amendment One to the Atlantic Billfish Fishery Management Plan (Atlantic Billfish FMP). North Atlantic tunas, swordfish and sharks are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP). The FMPs are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at 50 CFR part 635. In addition, billfish, swordfish, and tunas are managed internationally by the International Commission for the Conservation of Atlantic Tunas (ICCAT), to which the United States is a contracting party. The Secretary of Commerce has the responsibility, under the Atlantic Tunas Convention Act (ATCA), to promulgate regulations as necessary and appropriate to implement ICCAT recommendations.

Atlantic Blue and White Marlin Stock Status and Management History

The most recent stock assessment for Atlantic blue marlin, conducted in 2000 by ICCAT’s Standing Committee for Research and Statistics (SCRS), indicated that total Atlantic blue marlin stock abundance is at approximately 40 percent of the biomass needed to support maximum sustainable yield (B_{msy}), and that the current fishing mortality rate is approximately four times higher than that which would allow achievement of the maximum sustainable yield (F_{msy}). The SCRS recommended that ICCAT take additional steps to reduce the catch of blue marlin as much as possible.

The SCRS conducted a stock assessment for white marlin in 2002. The 2002 assessment concluded that white marlin are overfished and that overfishing continues to occur. Relative white marlin biomass (B_{2001}/B_{msy}) is approximately 0.12 and relative fishing mortality (F_{2000}/F_{msy}) is approximately 8.28.

At its November, 2000 meeting, ICCAT developed a two-phased rebuilding plan for Atlantic blue and white marlin (ICCAT Recommendation 00–13). Phase One of the Atlantic marlin rebuilding plan required that countries capturing marlin in commercial fisheries reduce Atlantic blue marlin landings by 50 percent and white marlin landings by 67 percent from 1999 levels. As part of the rebuilding program, the United States agreed to limit annual landings by U.S. recreational fishermen to 250 Atlantic blue and white marlin, combined, for 2001 and 2002, and to maintain regulations that have prohibited the retention of marlins by U.S. pelagic longline fishermen since implementation of the 1988 Atlantic Billfish FMP.

In 2002, ICCAT amended Phase One of the Atlantic marlin plan by extending the rebuilding plan through 2005 (ICCAT Recommendation 02–13). ICCAT also specified that, through 2005 (Phase One), the annual amount of blue marlin that can be harvested and retained by foreign pelagic longline and purse seine vessels must be no more than 50 percent of the 1996 or 1999 landing levels, whichever is greater. For white marlin, the annual amount that can be harvested and retained by foreign pelagic longline and purse seine vessels must be no more than 33 percent of the 1996 or 1999 landing levels, whichever is greater. ICCAT recommended that all blue and white marlin brought to pelagic longline and purse seine vessels alive be released in a manner that maximizes their survival. These provisions do not apply to marlin that are dead when brought alongside the vessel and that are not sold or entered into commerce.

The SCRS intends to conduct new stock assessments for Atlantic blue and white marlin in 2005 and to evaluate stock recovery options, taking into account the new stock assessments, any new information, and any reevaluation of historical catch and effort data. Based upon the SCRS assessment and evaluation, ICCAT will develop and adopt additional programs in 2005 to rebuild Atlantic marlin stocks to B_{msy} , if necessary.

Recent U.S. Recreational Atlantic Marlin Fishery Management Actions

To facilitate compliance with Phase I of the ICCAT billfish rebuilding plan, NMFS implemented regulations, which became effective in March 2003, requiring: (1) an Atlantic HMS recreational Angling category permit (December 18, 2002; 67 FR 77434); and, (2) mandatory self-reporting of all non-

tournament recreational landings of Atlantic marlins, sailfish, and swordfish (January 7, 2003; 68 FR 711). These new requirements, in conjunction with existing mandatory billfish tournament registration and tournament reporting through the Recreational Billfish Survey (RBS), will enable the United States to monitor more accurately recreational landings of Atlantic marlins, sailfish, and swordfish. They are expected to provide essential information to help gauge billfish fishing effort, recreational landings, and U.S. compliance with ICCAT Recommendations 00–13 and 02–13.

Proposed Atlantic Blue and White Marlin 250–Fish Landing Limit

The primary issue for the United States resulting from ICCAT Recommendation 00–13 is to determine an appropriate management strategy to ensure compliance with an annual limit of 250 Atlantic blue and white marlin, combined, through 2005. In addition, it is necessary to develop a methodology to implement ICCAT Recommendation 00–14 which specified that, for any species under catch limit management, underages/overages from one year may be added to/must be subtracted from the catch limit of the management period immediately after or one year after that year, unless any other recommendation dealing with overages/underages takes precedence. These ICCAT recommendations have not yet been codified by the United States. Therefore, this rule proposes to establish a 250–fish annual Atlantic marlin landing limit with a carryover provision for landings above/below the limit (beginning with overages or underages from the 2003 fishing year and adjustments made in the 2004 fishing year), and to implement regulations that will ensure compliance with the annual landing limit.

In the EA/RIR for this proposed rule, NMFS analyzed five alternatives to implement a 250–fish annual marlin landing limit, and to ensure compliance with the limit. They were selected to provide a maximum range of alternatives. The alternatives included: (1) a no-action alternative (*i.e.*, status quo); (2) a year-round catch and release marlin fishery; (3) a catch and release fishery upon achieving the landing limit for the remainder of the fishing year (through May 31); (4) an increase in Atlantic blue and white marlin minimum fish sizes, if necessary, upon landing 80 percent of the limit (which would be effective for the remainder of the fishing year), and with a backstop catch and release only fishery if 100 percent of the annual limit is achieved

; and, (5) a mandatory landings tag program whereby 250 tags would be issued, and only tagged fish could be landed. Under each alternative, the carryover provision would apply, meaning that landings above the limit in a given fishing year (beginning in 2003) would be deducted from the limit in a subsequent fishing year (beginning in 2004), and underages of the limit from a given fishing year (beginning in 2003) could be added to the limit in a subsequent fishing year (beginning in 2004).

To ensure compliance with the ICCAT recommendations and to minimize any adverse economic impacts on U.S. charter/headboat operators and other recreational fishers, NMFS is proposing to implement the alternative that would increase Atlantic marlin minimum fish sizes for the remainder of the fishing year, if necessary, when 80 percent of the limit is landed, or projected to be landed. Specifically, the proposed measures would maintain existing regulations until 80 percent of landing limit is projected to be landed. At that point, Atlantic blue and white marlin minimum fish sizes would be increased for the remainder of the fishing year, if necessary, to an appropriate length whereby the landing limit would be achieved, but not exceeded. If the landing limit is not projected to be achieved by the close of the fishing year, then minimum fish sizes may not need to be increased. As a preventive backstop, if the minimum size increase fails to keep landings below the 250–fish limit, the marlin fishery would become catch and release from the date the 250–fish limit is achieved until the end of the fishing year. Because Atlantic marlin occur predominantly in Federal waters, this proposed rule includes a rebuttable presumption that any Atlantic marlin landed were taken seaward of the inner boundary of the U.S. Atlantic Exclusive Economic Zone (EEZ).

NMFS believes that the proposed measures have the highest probability of keeping within the landing limit, while still allowing marlin landings for the entire duration of the fishing year. This is especially important for areas where fishing activity, including tournaments, occurs later in the fishing year. While those areas could be adversely impacted by increased minimum sizes, the impacts are expected to be less severe than a total prohibition on landings. It is important to emphasize that, based upon the RBS (which monitors tournament landings), the United States has been below the proposed landing limit for the past several fishing years. Although the magnitude of non-

tournament landings is currently unknown, it is very possible that the overall annual 250–fish landing limit will not be achieved. If that is the case, NMFS has the option, under the proposed measures, to take no action when 80 percent of landing limit is achieved, if projections indicate that 100 percent of the limit will not be reached before the end of the fishing year. Any minimum size increase would be filed with the Office of the **Federal Register** at least 14 days prior to the effective date of any adjustment. NMFS will notify constituents of the adjustment through contact with HMS AP members, recreational fishing publications, and through the use of the HMS fax network and HMS internet website.

Clarification of HMS Recreational Reporting Requirements

This rule also proposes to clarify, for enforcement purposes, a recreational reporting requirement for billfish, and swordfish that was originally specified in a January 7, 2003, (68 FR 711) final rule. Inadvertently, some HMS regulations currently indicate that anglers are required to call in recreational landings, using a NMFS toll-free number, while other regulations, primarily for bluefin tuna, indicate that vessel owners are required to report. The regulatory language at § 635.5(c)(2), § 635.71(c)(6), and § 635.71(e)(15), for example, indicates that anglers are required to report all non-tournament landings of billfish and swordfish to NMFS. Also, § 635.71(b)(6) indicates that anglers are required to report landings of bluefin tuna. However, § 635.5(c)(1) indicates that owners of vessels permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report bluefin tuna landings that are under the Angling category quota designated at § 635.27(a).

This proposed rule would specify that owners of vessels permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report landings of bluefin tuna under the Angling category, and that owners of vessels permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all non-tournament recreational landings of billfish and swordfish. Permits under the Atlantic HMS Angling category and the Atlantic HMS Charter/Headboat category are issued to vessel owners. Therefore, the requirement to report landings should logically, and for enforcement purposes, be similarly incumbent upon owners of

vessels permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category.

Meeting Locations, Dates, and Times

1. Wednesday, October 1, 2003—Destin, FL, 7–9 p.m.
Destin Community Center
101 Stahlman Avenue
Destin, FL 32541
2. Tuesday, October 7, 2003—Kill Devil Hills, NC, 7–9 p.m.
Ramada Inn/Outer Banks Resort and Conference Center
1701 Virginia Dare Trail
Kill Devil Hills, NC 27948
3. Wednesday, October 8, 2003—Ocean City, MD, 7–9 p.m.
Ocean City Council Chambers
301 Baltimore Avenue
Ocean City, MD 21842
4. Tuesday, October 14, 2003—Miami, FL, 7–9 p.m.
University of Miami
Rosenstiel School of Marine and Atmospheric Sciences
4600 Rickenbacker Causeway
Science and Administrative Building, Room 103
Miami, FL 33149
5. Thursday, October 16, 2003—Ponce, Puerto Rico 7–9 p.m.
Ponce Holiday Inn
3315 Ponce By Pass,
Ponce, PR 00728

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* The Assistant Administrator (AA) for Fisheries, NOAA, has preliminarily determined that the regulations contained in this proposed rule are necessary to implement the recommendations of ICCAT and are necessary for the management of Atlantic HMS fisheries.

NMFS prepared a draft Environmental Assessment (EA) for this proposed rule that discusses the impact on the environment of this rule. The AA has preliminarily concluded that there would be no significant impact on the human environment if this proposed rule was implemented. The EA presents analyses of the anticipated impacts of these proposed regulations and the other alternatives considered. A copy of the draft EA is available from NMFS (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA) that describes the economic impact this proposed rule,

if adopted, would have on small entities. A description of the action, the purpose and need for the action, and the legal basis for the action are contained in the preamble to this proposed rule and in the **SUMMARY** section. A summary of the analysis follows:

Codification of a 250–fish annual Atlantic marlin landing limit and implementation of compliance measures are precautionary steps that are being proposed to comply with ICCAT Recommendations and to enhance conservation. At present, NMFS believes that the proposed 250–fish landing limit is not likely to be exceeded. This is based upon RBS data (primarily tournament landings) indicating that 191, 127, 97, and 129 Atlantic marlin were landed during the 1999, 2000, 2001, and 2002 (2002 preliminary data) fishing years, respectively. Therefore, adverse economic impacts are not expected under any of the alternatives, except for the year-round catch and release alternative. Although the landing limit is not presently expected to be exceeded, it is possible for documented landings to increase in the future because the recreational marlin fishery is an open access fishery (*i.e.*, no limits on entry) and because new recreational HMS reporting requirements have recently been implemented.

There are several unknowns that make an assessment of economic impacts difficult to quantify. These include the absence of a reliable estimate of total tournament and non-tournament marlin landings, uncertainty regarding the number of marlin fishermen, and uncertainty regarding angler behavior in a catch and release only Atlantic marlin fishery. Nevertheless, as described below, the preferred alternative that is being proposed is expected to have the least adverse economic impact on small entities, while simultaneously achieving the objectives of the Magnuson-Stevens Act, ATCA, and relevant ICCAT recommendations.

The total population of recreational billfish anglers has not been quantified. This is because not all vessels possessing HMS Angling category and HMS Charter/headboat permits participate in the recreational billfish fishery. Many fish primarily for tuna. For purposes of analysis, this document assumed that approximately 10,000 vessels, all of which are considered small entities, could be affected by the proposed Atlantic marlin actions.

In order to compare the relative economic impact of the proposed alternatives, several assumptions were necessary. These assumptions are

described in detail in the EA/RIR prepared pursuant to this proposed rule (see **ADDRESSES**) and not repeated here. Also, because NMFS has no data predicting angler behavior under a catch and release scenario, the assumptions were inferred using data on current and past behavior and, in general, present worst case scenarios.

As described earlier, for the 250–fish landing limit NMFS analyzed five alternatives, including the no-action alternative.

The preferred alternative (Alternative 1d) would increase marlin minimum fish sizes when 80 percent of the landing limit is projected to be achieved, if deemed necessary. Under a worst case scenario that the 80 percent trigger would be met roughly estimated around October 15, this alternative could potentially result in a reduction of between 6 and 145 charter trips, in aggregate, assuming that charterboats would cease fishing for marlin when the minimum size increased. This would equate to an annual industry wide gross revenue loss of between \$4,050 to \$97,875. NMFS does not anticipate that any tournaments would cease operations, because no marlin-only tournaments are known to occur during the projected time period for any size increase (October 15 to May 31). Furthermore, many tournaments that include marlin as an award species already specify a tournament minimum size that is greater than the current legal minimum size of 99 inches (251.5 cm). If 250 marlin are landed, even with the increased size limit, then any negative economic impacts would be greater because landings would then have to be prohibited. This alternative is intended to allow some level of landings for the entire duration of the fishing season, without having to resort to a prohibition on landings (*i.e.*, catch and release). Thus, it is expected to minimize adverse economic impacts, yet be consistent with ICCAT recommendations.

The no-action alternative (1a) would not produce any negative short-term economic impacts, however it is not consistent with the goals and objectives of the FMP and fails to ensure compliance with ICCAT recommendations.

Alternative 1b (year-round catch and release fishery) could potentially result in a reduction of between 104 to 2,696 charter trips, in aggregate, for a total annual lost revenue of between \$70,200 and \$1.82 million. Potentially, 10 tournaments could cease operations under this alternative, with a resulting total annual gross revenue loss as high as \$6 million.

Alternative 1c (catch and release when 250 marlin landed) could potentially result in a reduction of between 2 to 47 charter trips, in aggregate, for a total annual lost revenue of between \$1,350 and \$31,750. This assumes that the 250 marlin limit is met roughly estimated around May 15 and that charterboats would cease fishing of the fishery became all catch and release. NMFS does not expect that any tournaments would be cancelled, because no marlin-only tournaments are known to occur during the projected time period for any closure (May 15–May 31). However, if landings patterns change from current patterns and result in achievement of the 250 fish limit earlier in the fishing year, then this alternative could create sizeable negative economic impacts on charter vessels and billfish tournaments, particularly in areas where fishing activity occurs later in the fishing year.

Alternative 1e (landings tag program) would be expected to result in a reduction of between 103 and 2,671 charter trips annually with a potential decrease in total gross revenues of between \$69,525 to \$1,802,925. For tournaments, this alternative could be expected to result in the cancellation of up to 10 tournaments with an economic impact of \$6.0 million dollars.

With regards to the proposed recreational reporting requirements, only two alternatives were considered because no other alternatives would meet the stated purpose of clarifying the regulations for enforcement purposes, and making the regulations consistent with other HMS regulations. The no-action alternative would not produce any negative economic impacts. However, the current regulations have created some confusion in the regulated community due to inconsistencies with other HMS recreational reporting requirements which require the vessel owner to report (*i.e.* bluefin tuna landings in the Angling category). Furthermore, because vessel permits are issued to vessel owners, enforcement is compromised under this alternative because permit sanctions cannot be used as a potential compliance mechanism. Alternative 2b (in which vessel owners report) would not produce any negative short-term economic impacts. The toll-free reporting system takes less than 3 to 5 minutes for each no-cost report and an additional 3 to 5 minutes for a confirmation call-back. In addition, this alternative would achieve consistency in recreational HMS reporting requirements and facilitate enforcement. It is possible, under Alternative 2b, that the required number of reports would be

reduced, because only one report from a vessel owner would be required for trips that land more than one fish by several different anglers.

This rule does not duplicate, overlap, or conflict with any relevant Federal rules. None of the alternatives considered in this document would result in additional reporting, record keeping, compliance, or monitoring requirements for the public.

The call-in reporting requirement for recreational non-tournament landings was previously approved under OMB 0648–0446.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0446. Public reporting burden for each landing report or confirmation call is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS (see **ADDRESSES**) and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395–7285.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: September 11, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.5, paragraph (c)(2) is revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(c) * * *
(2) *Billfish and North Atlantic Swordfish.* The owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all non-tournament landings of Atlantic blue marlin, Atlantic white marlin, sailfish, and North Atlantic swordfish, including those landed on a charter/headboat, to NMFS by calling 1–800–894–5528 within 24 hours of the landing. For telephone reports, a contact phone number must be provided so that NMFS can call the vessel owner back for follow up questions and to provide a confirmation of the reported landings. The telephone landing report has not been completed unless the vessel owner has received a confirmation number from a NMFS' designee.

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3. In § 635.20, paragraph (d)(4) is added to read as follows:

§ 635.20 Size limits.

* * * * *

(d) * * *
(4) The Atlantic blue and white marlin minimum size limits, specified in paragraphs (d)(1) and (d)(2) of this section, may be adjusted, if necessary, to sizes determined to be appropriate to achieve, but not exceed, the annual Atlantic marlin landing limit, specified in § 635.27(d), when 80 percent of the annual Atlantic marlin landing limit is projected to be harvested, through publication in the **Federal Register**. In no case shall such adjustment be effective less than 14 days after the date of filing with the Office of the **Federal Register** for publication. The adjustment will be in effect through the end of the fishing year (May 31).

* * * * *

4. In § 635.27, paragraph (d) is added to read as follows:

§ 635.27 Quotas.

* * * * *

(d) *Atlantic Blue and White Marlin.* The total annual recreational landings limit for Atlantic blue and white marlin, harvested from the management unit, is 250 fish, combined, during a given fishing year (June 1 to May 31), except as provided in paragraph (d)(1) of this section. It is a rebuttable presumption that any landed Atlantic marlin was taken seaward of the inner boundary or the U.S. Atlantic EEZ. After the landings limit is attained, no landings of Atlantic blue and white marlin are allowed.

(1) If the Assistant Administrator (AA) determines, based upon landings statistics and other available

information, that aggregate landings of Atlantic blue and white marlin are above the annual Atlantic marlin landings limit, as established in paragraph (d) of this section, the AA shall subtract the overharvest from the following fishing year's Atlantic marlin landings limit, beginning with any overharvest from the 2003 fishing year, consistent with ICCAT

recommendations. If the AA determines, based on landings statistics and other available information, that aggregate landings of Atlantic blue and white marlin are below the annual Atlantic marlin landings limit, the AA may add the underharvest to the following fishing year's annual Atlantic marlin landings limit, as established in paragraph (d) of this section, beginning with any underharvest from the 2003 fishing year, consistent with ICCAT recommendations. The AA will publish any adjustment to the Atlantic marlin landing limit made pursuant to this paragraph in the **Federal Register**.

(2) [Reserved]

5. In § 635.28, paragraph (d) is added to read as follows:

§ 635.28 Closures.

* * * * *

(d) *Atlantic Blue and White Marlin.* If the annual Atlantic marlin landings

limit specified in § 635.27 (d) is exceeded, or is projected to be exceeded, the AA will establish a closure date based upon the date the landings limit is exceeded, or is projected to be exceeded, and publish an action in the **Federal Register** prohibiting the landings of any Atlantic blue and white marlins from the closure date through the remainder of the fishing year (through May 31). In no case shall such closure be effective less than 14 calendar days after the action is filed with the Office of the **Federal Register**.

6. In § 635.34, paragraph (a) is revised to read as follows:

§ 635.34 Adjustment of Management Measures.

(a) NMFS may adjust the catch limits for BFT, as specified in § 635.23; the quotas for BFT, shark, and swordfish, as specified in § 635.27; the combined annual landing limit for Atlantic blue and white marlin, as specified in § 635.27(d); and the minimum sizes for Atlantic blue and white marlin, as specified in § 635.20(d).

* * * * *

8. In § 635.71, paragraphs (b)(6), (c)(6), and (e)(15) are revised, and paragraph (c)(7) is added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(b) * * *

(6) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a BFT, as specified in § 635.5(c)(1) or (3).

* * * * *

(c) * * *

(6) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a billfish, as specified in § 635.5(c)(2) or (3).

(7) Retain on board a vessel or land an Atlantic blue or white marlin when the fishery for these species is closed, as specified in § 635.28(d).

* * * * *

(e) * * *

(15) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a North Atlantic swordfish, as specified in § 635.5(c)(2) or (3).

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